

Comparison of the ADA, the ADA Amendments Act & the FEHA

Term	Americans with Disabilities Act of 1990 (ADA) (42 U.S.C. § 12101. et seq.) and Subsequent Court Decisions	ADA Amendments Act of 2008 (Eff. 1/1/09) (ADAAA) (Pub. Law 110-325; 42 U.S.C. § 12101, et seq., as amended)	Fair Empl. & Hous. Act (FEHA) (Gov. Code § 12900, et seq., as amended by the Prudence K. Poppink Act of 2000)
“Disability” Definition	<p>An employee or applicant is “disabled” if s/he: (1) has an actual physical or mental impairment that <i>substantially limits</i> a major life activity; (2) has a record of such an impairment; or (3) is regarded as having such an impairment. [§ 12102(2).]</p> <p>U.S. Supreme Court and circuit court cases narrowed this definition, excluding many medical impairments from the definition of “disabilities.”</p>	<p>Congress reaffirmed that the definition of “disability” should be construed in favor of <i>broad coverage</i> of individuals, specifically disapproving U.S. Supreme Court cases which had narrowed coverage. [See Congressional findings at Pub. Law 110-325, §2(a) & (b); 42 U.S.C. § 12102(1) & see rules of construction language at § 12102(4).]</p>	<p>A person is “disabled” if s/he has a physical or mental impairment that <i>limits</i> a major life activity; has a record of such an impairment, is regarded as having or having had such an impairment, or is regarded or treated as having an impairment that has no present disabling effect but might become a future disability. [§§ 12926(i) & (k), 12926.1(c).]</p> <p>Definitions of physical and mental disabilities are to be <i>broadly construed</i>. [§ 12926.1(b)]</p> <p>FEHA is specifically distinguished from the ADA. [§ 12926.1(a) & (d).]</p>
“Mitigating Measures”	<p>Mitigating measures which ameliorate disabilities’ effects such as medication or medical supplies are considered in determining whether a person is substantially limited in a major life activity. [Sutton v. United Airlines (1999) 527 U.S. 471; Murphy v. United Parcel Service (1999) 527 U.S. 516 & Albertson’s, Inc. v. Kirkingburg (1999) 527 U.S. 555.).]</p>	<p>Mitigating measures are <i>not</i> considered in determining whether an individual has an impairment that substantially limits a major life activity [§ 12102(4)(E)], but “ordinary eyeglasses or contact lenses” may be taken into account. [§ 12102(4)(E)(i)(I).]</p>	<p>Mitigating measures are not considered in determining whether an individual has an impairment that “limits” a major life activity unless the mitigating measure itself limits a major life activity. [§§ 12926(i)(1)(A) & (k)(1)(B), 12926.1(c).]</p> <p>No mention of eyeglasses or contact lenses.</p>

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“Substantially Limits”	An impairment “substantially limits” a “major life activity” if it prevents or severely restricts the individual from performing the activity. [<i>Toyota Motor Mfg. of Kentucky v. Williams</i> (2002) 534 U.S. 184, 198.] EEOC regulations provide: “substantially limits” means “significantly restricts.” [29 C.F.R. § 1630.2(j)(ii).]	The ADAAA’s Congressional findings provide that the EEOC and the Supreme Court have incorrectly interpreted the term “substantially limits” to establish a greater degree of limitation than Congress intended. [ADAAA of 2008, Pub. Law 110–325, § 2(a)(4)-(8) & (b)(6).]	FEHA requires that the physical or mental condition “limits” one or more major life activities, making “the achievement of the major life activity “difficult.” [§§ 12926(i)(1)(B) & (k)(1)(B)(ii), 12926.1(c).]
“Major Life Activity”	A “major life activity” must be an activity that is “of central importance to most people’s daily lives.” [<i>Toyota Motor Mfg. of Kentucky v. Williams, supra</i> , 534 U.S. at p. 184.] Some lower courts had required that individuals must be limited in more than one major life activity to be considered “disabled.” [See, e.g., <i>E.E.O.C. v. HBH Inc.</i> (E.D.La. Dec. 9, 1999) 1999 WL 11385333; <i>E.E.O.C. v. J. B. Hunt Transport, Inc.</i> (2d Cir. 2003) 321 F.3d 69; <i>McClure v. General Motors Corp.</i> (5th Cir. 2003) 2003 WL 21766539.]	Disavows <i>Toyota v. Williams</i> and gives a non-exhaustive list of major life activities, including seeing, hearing, eating, sleeping, walking, learning and concentrating, as well as the operation of “major bodily functions” such as the immune and endocrine systems and normal cell growth. [§ 12102(2).] Only one major life activity is needed to establish a limitation. [§ 12102(4)(C)]	Major life activities are to be “broadly construed” and include physical, mental, and social activities and working. [§§ 12926(i)(1)(C) & (k)(1)(B)(iii), 12926.1(c)] An employee’s impairment need affect only a particular job, not a class or broad range of employment, to “limit” the major life activity of “working.” [§ 12926.1(c)]

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“Episodic Conditions”	Some federal courts had held that episodic or intermittent impairments, such as epilepsy or post-traumatic stress disorder, were not covered as disabilities. [See, e.g., <i>Chenoweth v. Hillsborough County</i> (11th Cir. 2001) 250 F.3d 1328 and <i>Todd v. Academy Corp.</i> (1999) 57 F.Supp.2d 488. [epilepsy]; <i>Schriner v. Sysco Food Serv.</i> (M.D. Pa. 2005) 2005 WL 1498497 & <i>Hewitt v. Alcan Aluminum Corp.</i> (N.D.N.Y.2001), 185 F.Supp.2d 183, 189 [post-traumatic stress disorder].]	Clarifies that impairments that are episodic or in remission are considered disabilities if the impairment while in its active phase substantially limits a major life activity. [§ 12102(4)(D).]	Specifically states that chronic or episodic conditions are covered as disabilities. [§ 12926.1(c).]
“Regarded as Having a Disability”	In <i>Sutton</i> , the U.S. Supreme Court required an individual to prove that the employer actually believed that the individual was disabled and also believed that many other employers would have discriminated against the individual also.	ADAAA focuses on how an individual is treated rather than proving the employer’s perception. ADAAA provides that an individual meets the “regarded as having such an impairment” if the individual establishes that s/he has been subjected to an ADA-prohibited action because of an actual or perceived physical or mental impairment whether or not that impairment is actually a disability (that is, the impairment limits or is perceived to limit a major life	FEHA still focuses on an employer’s perception. An individual is protected if s/he is “regarded or treated as” having or having had any physical or mental condition that (1) makes achievement of a major life activity difficult; or (2) has no present disabling effect but may become a future qualifying physical or mental condition. [§ 12926(i)(4)-(5) & (k)(4)-(5).] There is no durational limit to be a disability in FEHA. Note that FEHA provides that when the ADA’s definition of “disability”

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		<p>activity, so long as the impairment lasts more than six months). [§ 12102(3)(A).]</p> <p>Employers have no duty to provide a reasonable accommodation or modification to individuals who fall solely under the “regarded as” prong. [§ 12201(h).]</p>	<p>results in “broader protection” of the civil rights of disabled individuals than the FEHA’s, then “that broader protection” or coverage prevails over conflicting FEHA provisions. [§ 12926(l).]</p> <p>Employer has a duty to engage in interactive process to explore reasonable accommodation with an employee <i>regarded as</i> disabled. [<i>Gelfo v. Lockheed Martin</i> (2006) 140 Cal.App.4th 34.]</p>
Findings and Construction	<p>The terms “substantially limits” and “major life activity” must be “interpreted strictly to create a demanding standard for qualifying as disabled.” [<i>Williams</i>, 534 U.S. at p. 197.]</p>	<p>Reaffirms that the ADA should be broadly construed. [ADAAA of 2008, Pub. Law 110–325, § (a); 12102(4).]. In ADA cases, whether an individual’s impairment is a disability should not demand extensive analysis. Instead, courts’ attention should be on whether covered entities have complied with their obligations. And, EEOC should adopt new regulations consistent with ADAAA’s broad coverage intent. [ADAAA of 2008, Pub. Law 110–325, § (b)(5)-(6).]</p>	<p>FEHA provides protections independent of ADA, containing broad definitions of what is considered a disability. [12926.1.]</p>